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P21273.A08

Application No. 09/926,600

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :Kenji ABIKO

Office of Petitions

Appl. No. : 09/926,600

Examiner: Wilkins

Filed : November 26, 2001

For :Cr-BASED ALLOY HAVING AN EXCELLENT STRENGTH-  
DUCTILITY BALANCE AT HIGH TEMPERATURES

**PETITION FOR PATENT TERM EXTENSION  
UNDER 37 C.F.R. § 1.181 AND M.P.E.P. § 2720**

Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Service Window, **Mail Stop Patent Ext.**  
Randolph Building  
401 Dulany Street  
Alexandria VA 22314

Sir:

Further to the Determination of Patent Term Extension mailed from the U.S. Patent and Trademark Office May 27, 2005 which incorrectly indicates a Patent Term Extension (PTE) of 0 days, and to the information from the U.S. Patent and Trademark Office Patent Application Information Retrieval (PAIR) system (a copy of the screen shot from the PAIR system being enclosed herewith), Applicant respectfully submits that the Patent Term Extension of 0 days as set forth in the PAIR system is incorrect and requests that the Patent Term Extension be corrected to indicate the PTE of **547 days** for the reasons which follow.

***Statement of Facts***

The present application is a U.S. national phase application of a PCT international application filed **May 26, 2000**. A Notice of Appeal to the Board of Patent Appeals and Interferences was filed **September 4, 2003**. A final decision in favor of Applicant was mailed from the U.S. Patent and Trademark Office in the form of a Decision on Request for Rehearing on **March 3, 2005**.

In determining patent term extension due to appellate review, the extension is to be calculated as the sum of the number of days beginning on the date on which an appeal to the Board of Appeals was filed, and ending on the date of a final decision in favor of the Applicant. M.P.E.P. § 2720. This sum is reduced by any time during the period of appellate review that occurred before three years from the filing of the first national application. *Id.*

For a national stage application, it was necessary to determine whether the 35 U.S.C. §371 date is utilized or the filing date of the PCT International application when calculating the three year reduction. It is noted that after numerous telephone calls from the law firm of the undersigned to officials at the U.S. Patent and Trademark Office, the undersigned understands that the U.S. Patent and Trademark Office advises that even though published comments to the rules indicate that the § 371 date will be utilized for determining the three year reduction period, the U.S. Patent and Trademark Office actually uses the PCT International filing date.

Accordingly, since the PCT International Application was filed May 26, 2000, three years from that date is May 26, 2003 (as compared to a § 371 filing date of November 26, 2001 and a three year date of November 26, 2004). The Notice of Appeal was filed September 4, 2003, and therefore this date is subsequent to May 26, 2003 so that there should be no reduction for the three-year period.

Applicant notes that an issue exists as to whether the patent term extension should be calculated based on the mailing date of the initial Board decision reversing but affirming-in-part the rejections of record, or the final Decision on Request for Rehearing. The Decision on Appeal wherein the rejection was affirmed-in-part was mailed September 29, 2004, and the Decision on Request for Rehearing was mailed March 3, 2005.

According to conversations with officials of the U.S. Patent and Trademark Office, there should at least be a patent term extension for the sum of the days from September 4, 2003 until September 29, 2004 (*i.e.*, **392 days**). Moreover, the U.S. Patent and Trademark Office has indicated that it would consider whether this sum of days should be until March 3, 2005.

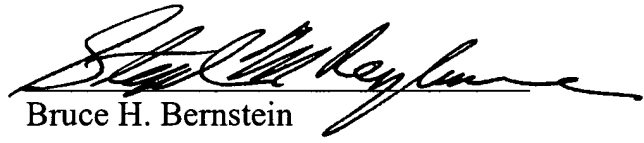
Inasmuch as it is clear that the Decision of the Board of Patent Appeals and Interferences was not **final** until the mailing of the Decision on Request for Rehearing, Applicant submits that it is abundantly clear that it is the mailing date of the Decision

on Request for Rehearing, *i.e.*, March 3, 2005, which should control.

Therefore a Patent Term Extension of **547 Days** is believed most appropriate and is respectfully requested.

No fee is believed necessary for the filing and consideration of this Petition. However, the Commissioner is hereby authorized to charge any additional fee due to Deposit Account No. 19-0089.

Respectfully submitted,  
Kenji ABIKO

  
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July 27, 2005  
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